THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 246 of 2001
Old F.A.F.O.No.796 of 1990

1. Conservator of Forest, Adhunik Van Agni Saman Pariyojna, Haldwani, Nainital.
2. The State of U.P. through Collector, Nainital

… Appellants.

Versus

1. Smt. Madhavi Devi W/O Sri Haridutt Brijavasi (deceased)
2. Sri Jeewan Chand son of Sri Haridutt Brijvasi (deceased)
3. Sri Mahesh Chand son of Sri Haridutt Brijvasi (deceased)
4. Sri Ram Chandra son of Sri Hari dutt Brijvasi (deceased)
   All residents of village Arjunpur, Tahsil Haldwani, Nainital. (Claimants)
5. Sri Virnendra Singh Vora S/O Deewan Singh Vora, Driver UGP 4165, Metadoor, Employee, Van Agni Saman Pariyojna, Haldwani, Nainital.

… Respondents

Sri Bhupender Singh, learned Standing Counsel for the appellants-State.
Sri Yogesh Pande, learned counsel for the claimant- respondents.

Date August 03, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 173 of the Motor Vehicles Act, 1988 (***for short the Act***) has been preferred against the judgment and award dated 23-5-1990 passed by the Motor Accident Claims Tribunal (III Additional District Judge) Nainital (***in short the Tribunal***) in M.A.C. Petition No. 142 of 1988, Smt. Madhavi Devi and others Vs. Conservator of Forest and others whereby the learned Tribunal awarded compensation of Rs. 1,68,000/- along with interest @ 10% per annum in favour of the claimants payable by the O.P.-appellant no.1 and decreed the claim petition moved under section 110-A of the Old Act 1939. It was also ordered that the amount paid under Section 92-A of the Old Act shall be adjusted towards payment of compensation. Aggrieved the owner-State has come up in this appeal.

Relevant facts necessary for a just decision of the appeal are that one Hari Dutt, an ex-military personnel erring Rs. 737/- as pension and Rs. 1200/- from agriculture, aged 47 years, lost his life as a result of fatal injuries sustained by him in a motor

vehicle accident which occurred on 16-1-1988 near Rampur Road toll barrier Haldwani involving matador No. UGP-4165, which was being driven rashly and negligently by its driver. It was alleged that the offending vehicle hit the Rickshaw in which the deceased was going along with his brother. Haridutt sustained grievous injuries and while taking to hospital, he died. The claimants, who are legal heirs and dependents of the deceased filed claim petition for compensation of Rs. 4,25,000/-. The owner of the vehicle filed his written statement and admitted the accident, but denied the negligence on the part of driver of the vehicle, rather it was stated that it was the Rickshaw puller on account of whose negligence that the motor accident occurred. The State of U.P. has taken the same stand as that of owner of the vehicle- Conservator of Forest. The driver-O.P.No.2 also contested the claim petition and filed his written statement. He denied the negligence on his part and similar assertions as that of the owner were taken.

The learned Tribunal framed necessary issues in the case, recorded the evidence led by the parties, heard them and after perusing the material on record, it came to the conclusion that the accident in question occurred due to sole negligence on the part of driver of offending vehicle and there was no contributory negligence on the part of rickshaw puller. The learned Tribunal after discussing the evidence on record held that the loss of dependency to the claimant could be Rs. 437/- the amount of rest of the pension out of Rs. 737/- plus Rs. 200/- per month as loss from agriculture. The learned Tribunal did not accept the contention of the claimants regarding loss of dependency on higher side than Rs. 500/- per month. The age of the deceased was established to be 47 years and longevity of life span of the deceased was taken as 75 years thereby it was concluded that the deceased would have contributed towards his family for another 28 years, had be not met with accidental death. The total amount of compensation was worked out as 500 x 12 x 28 = Rs. 1,68,000/-

Regarding liability of payment of compensation, the learned Tribunal found that O.P.-appellant no. 1 is the owner of the vehicle and the O.P.No.2, the driver was responsible for accident during the course of his employment, therefore, the owner of his vehicle was responsible for the wrong act of his servant and accordingly liability was fastened upon the owner of the vehicle. On these findings, the impugned order was passed by the learned Tribunal.

The Impugned judgment and award has been assailed on the ground that the department (owner of the vehicle) was not liable to make payment of compensation under the Act and the finding of the Tribunal is not based on evidence on record. On the other hand, The learned counsel for the claimant-respondents while supporting the impugned award contended that the finding of the Tribunal holding employer liable for the act done by its servant in the course of his employment is fully legal and proper.

I have heard rival contentions of the parties and perused the evidence on record including the impugned award. I have also perused the cross-objection filed on behalf of the claimants, a reference whereof shall be made in the latter part of the judgment.

At the outset, it may be mentioned that the appellant has not taken any specific plea in the appeal, rather the legality of the impugned judgment has been challenged on very weak and general manner. Even in the course of argument, the learned Standing Counsel could not point out any such illegality in the award under challenged so as to warrant interference of this Court. Even other wise the salient feature of the case are being examined herein.

In the case at hand, the claimant-respondents are the dependents of the deceased Hari Dutt. The factum of accident is admitted to the appellant. Though the burden to prove the negligence lay upon the claimants, but in this case this burden also

shifted to the appellants as they have taken up another stand and manner of accident. Therefore, material aspect regarding evidence led by the parties is to be seen.

The claimants have filed death certificate, copy of FIR photo copy of post mortem report, inspection report, site plan of the place of accident and other relevant papers regarding income and age of the deceased. Out of the witnesses produced by the claimants, two witnesses viz. P.W.2 Laxmi Datt and P.W.3 Ganesh Datt have given ocular account of the accident leading to the injuries and death of the deceased. I have read out the entire testimony of these two witnesses and find that they have given unshakened account of the whole incident and from their cross-examined nothing could be elicited which may give favour to the case of the opposite parties. The appellants have produced driver of the offending matador Virendra Singh D.W.1, who has tried to support the appellants as well as to save his skin. In his deposition he had stated that when the Rickshaw struck with the vehicle, the occupants thereof already fell on the road and empty Rickshaw hit the matador, but surprisingly no such stand was taken in the written statement. From a complete reading of his deposition vis-à-vis the written statement filed by the appellants goes to show that the deposition of the D.W.1 does not find corroboration from the pleas taken in the written statements. In the written statements, it has been stated that the accident occurred due to the negligence of the Rickshaw puller, but in the witness box it has been said that the passengers carried on Rickshaw had already went off the rickshaw and empty Rickshaw hit the motor vehicle.

The evidence of P.W.2 and P.W.3 read with documentary evidence on record including the F.I.R., site plan of the place of occurrence, spot inspection report filed by the claimants are sufficient to indicate that the accident took place due to the negligence of the driver of the vehicle belonging to the appellants.

The learned Tribunal while awarding compensation of Rs. 1,68,000/-, took the income of the deceased for purposes of loss of dependency to the tune of Rs. 500/- in all. It was established on record that the deceased was getting Rs. 737/- as monthly pension and the Tribunal only assessed total contribution of the deceased to his family to the tune of Rs. 500/- per month which included Rs. 200/- from agriculture. No amount toward loss of consortium, love and affection and funeral expenses were awarded by the Tribunal. However, considering the facts and circumstances of the case, I am of the view that compensation worth ***Rs. 1,68,000/-*** along with interest as awarded by the Tribunal is just and proper.

The ownership of the vehicle is admitted to the appellants. It is not denied that the accident took place in the course of his employment by the driver of the vehicle. The appellant could not lead any reliable or trustworthy evidence to indicate that there was contributory negligence on the part of the deceased. The appellants have miserably failed to discharge their burden. The liability to pay compensation under the Motor Vehicles Act lay upon the owner of the vehicle. I see no reason to interfere with the finding recorded by the Tribunal.

Now, coming to the cross-examination filed by the claimant-respondents, it appears that claimants were not satisfied by the dependency assessed by the Tribunal. The claimants could not lead any such evidence to indicate that there was substantive income of Rs. 12000/- per annum to the deceased and which could not be availed by the claimants due to his death. The deceased was not a young man but he was aged 47 years. The income from agriculture was not being taken away. The Tribunal has assessed the loss @ of about Rs.200/- per month. The amount of compensation has been properly assessed. It is well settled that in assessing the loss of dependency, aid of some guess-work is bound to be taken. The court is required to see that adequate compensation is awarded to the claimants. There is no concrete evidence to show that the deceased

was having net and regular income from agriculture yield. It has not been shown as to how much agricultural land was in possession of the deceased and from which source income of Rs.2,000/- was available, which on account of demise of the deceased has come to an end. Taking into account all the facts and circumstances, I am not inclined to find favour with the claimants to enhance the compensation amount. The award of the Tribunal is proper and fair. Cross-objections are accordingly liable to be dismissed.

In the result, the appeal is devoid of merit and must fail.

The appeal is hereby dismissed. Cross-objections filed by the claimants is also dismissed. The award under challenge is upheld. No order as to costs.

Interim order dated 19-11-1990 is vacated.

(B.S.Verma, J.)

RCP